

REMARKS

Claims 1-32, 34-46, and 49-73 are pending. In the instant Restriction Requirement dated June 14, 2007, election is requested between Group I, claims 1-21; Group II, claims 22-31; Group III, claims 32, and 34-44; Group IV, claims 45, 46, and 49-62, Group V; claims 63-70; and Group VI, claims 71-73. Group I, claims 1-21, is characterized as “a method, for creating a computer program by identifying a set of actions when using a cryptographic key, so that computer program can take such actions without requiring access to said key.” Group II, claims 22-31, is characterized as “a method, for performing a diversionary second set of actions different from a first set of actions.” Group III, claims 32, and 34-44, is characterized as “a method, of performing an action on a computing device performing a subaction.” Group IV, claims 45, 46, and 49-62, is characterized as “a method, of creating a computer program for performing a first action on two different occasions with two sets of computer executable instructions at a first and second location.” Group V, claims 63-70, is characterized as “a method, which detects modification or deletion of a portion of computer executable instructions and restores said portion.” Group VI, claims 71-73, is characterized as “a method, that uses error correction techniques with a second set of instructions to detect variations on a first set of instructions.” Applicant hereby elects, with traverse, Group I, claims 1-21, for further examination. Claims 22-32, 34-46, and 49-73 are hereby withdrawn. Applicant reserves the right to pursue the subject matter of claims 22-32, 34-47, and 49-73 in one or more divisional applications and/or to rejoin claims 22-32, 34-46, and 49-73 pursuant to MPEP § 821.04.

Applicant traverses the instant Restriction Requirement because Examiner has provided no reasons or examples to support conclusions as to why the claims are subject to restrictions. In accordance with MPEP § 803 II, “Examiners must provide reasons and/or examples to support conclusions...” (Emphasis added). The instant Restriction Requirement states that Groups I-VI “are related as subcombinations disclosed as usable together in a single combination.” No reason is provided as to why the Groups are considered subcombinations. No reason is provided as to why the Groups are characterized as subcombinations that are distinct from each other. No reason is provided as to how the

Groups are distinctive from each other. Further, no explanation is given as to where it is disclosed that subcombinations are usable together in a single combination.

The instant Restriction Requirement further recites that “[t]he subcombinations are distinct from each other if they are shown to be separately usable.” MPEP § 806.05(d) is cited as support for this statement. It is respectfully submitted that MPEP § 806.05(d) is not being appropriately applied because a key portion of MPEP § 806.05(d) is not addressed. MPEP § 806.05(d) recites: “Two or more claimed subcombinations, disclosed as usable together in a single combination, and which can be shown to be separately usable, are usually restrictable when the subcombinations do not overlap in scope...” (Emphasis added). The emphasized portion of MPEP § 806.05(d) has not addressed. Examiner has not shown that the Groups do not overlap in scope.

The instant Restriction Requirement further is traversed because restriction was made after a final action. 37 C.F.R. § 1.142 states that a restriction requirement “may be made any time before final action.” (Emphasis added). A final action for the instant application was mailed on May 30, 2006. Thus, a restriction requirement, if necessary, should have been made prior to the 5/30/06 final action.

Moreover, the instant Restriction Requirement is traversed because no serious burden is placed on the Examiner as required by MPEP § 803 I (B) and because the instant Restriction Requirement is contradictory to the intent of 37 C.F.R. § 1.142 and MPEP § 811. 37 C.F.R. § 1.142 states that “[s]uch requirement will normally be made before any action on the merits...” Although, 37 C.F.R. § 1.142 states that a restriction requirement can be made any time before final action, the intent is clear that any restriction requirement should be made as soon as possible during examination. Early restriction, if necessary, is further emphasized in MPEP § 811, which recites in part, “the examiner should make a proper requirement as early as possible in the prosecution, in the first action if possible...” MPEP § 811 additionally makes clear the burden on the Examiner must be considered if a restriction is made after a first Office Action. “Before making a restriction requirement after the first action on the merits, the examiner will consider whether there will be a serious burden if restriction is not required.” (Emphasis added). In fact, one of the required criteria for a

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proper restriction requirement, per MPEP § 803 I (B), is that “[t]here would be a serious burden on the examiner if restriction is not required.” (Emphasis added).

Obviously, no serious burden is placed on Examiner because the instant application has been under examination for over 3 ½ years without a single mention of a burden or need for restriction. The first Office Action on the merits, for the instant application, is dated September 9, 2004. In the first Office Action, and in four subsequent Office Actions, including a final action, all claims have been subject to examination without any indication of a need for restriction or any indication of a serious burden being placed on the Examiner. Because the claims under restriction have been previously examined, on multiple occasions, on the merits, without a single mention of any burden being placed on Examiner, or a single indication of a need for restriction, and because the restriction was made after a final action, it is submitted that the instant Restriction Requirement is improper.

For the reasons provided above, Applicant traverses the Restriction Requirement. Reconsideration and withdrawal of the restriction requirement are respectfully solicited and early consideration and allowance of the present application is respectfully requested.

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